

Brattleboro Retreat and Federation of Nurses and Health Care Professionals, AFT, AFL-CIO, Petitioner. Case 1-RC-19742

March 8, 1993

ORDER AFFIRMING DISMISSAL

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Petitioner's request for review of the Regional Director's Administrative Dismissal of Petitioner's petition, as well as the Employer's opposition brief. The request for review is granted as it raises substantial issues warranting review.

A careful review of the administrative record in this case, as well as the record in Case 1-RC-19498, a prior case,¹ and the Regional Director's Decision and Direction of Election in that case,² support the Regional Director's dismissal of the petition.³

APPENDIX A

Regional Director's Dismissal Letter

Dear Mr. Jacobsen:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

I have determined that further processing of the petition is not warranted.

The Employer is a health care institution engaged in the treatment of psychiatric and addictive diseases, and in providing long-term care and vocational rehabilitation at its Brattleboro, Vermont facility. On January 18, 1991, in Case 1-RC-19498, the Petitioner filed a petition seeking to represent a bargaining unit limited to the Employer's technical employees. On April 11, 1991, I issued a Decision and Direction of Election in that case, in which I found that a unit limited to the Employer's technical employees was not appropriate. I also directed an election in a unit consisting of all of the Employer's non-professional employees. The Decision in that case was based on a comprehensive record developed by the parties at hearing.

In brief, the evidence presented during the hearing in Case 1-RC-19498 demonstrated that the interests of all of the Employer's non-professional employees are identical in many

respects. For instance, all such employees share common personnel policies, benefits, and overall working conditions. The average wage rate for non-technical, non-professional employees is 89 percent of that for technical employees, and the Employer's technical employees share wage classifications with many non-technical, non-professional employees.

The evidence also showed that there was not as much difference between the qualifications, skills, and training of the two groups as may be the case in other health care institutions. Many of the Employer's technical employees, including mental health workers (MHW), the largest group of technical employees, require only a high school education and do not acquire their skills through technical schools or colleges. Many non-technical, non-professional classifications also require a high school education. In addition, both technical employees and many non-technical, non-professional employees attend in-service educational programs.

The record also demonstrated that the Employer's operations are functionally integrated. In part due to this integration, the interests of the employees in the two main components of the Employer, the Rockwell Center psychiatric hospital and the Linden Lodge nursing home are intertwined. The technical employees at these two components have important and frequent work-related contact with non-technical, non-professional employees. Some technical employees share supervision with some non-technical, non-professional employees. There was also evidence of transfers of employees between Linden Lodge and Rockwell Center, of permanent transfers between technical classifications and non-technical, non-professional classifications, and of the performance of similar or common duties by some employees in both groups.

Based upon the record as a whole as highlighted by the facts above, and in view of the prevailing case law at the time, I determined in Case 1-RC-19498 that a unit limited to the Employer's technical employees was not appropriate under the Act. In *St. Francis Hospital*, 271 NLRB 948 (1984) (*St. Francis II*) the Board had articulated a "disparity of interests" standard for the analysis of bargaining units in the health care field. Under this standard, the Board required more in the way of differences between the employees requested and those in an overall unit than would be necessary in another industry before it would find a separate smaller unit to be appropriate. *St. Vincent Hospital*, 285 NLRB 365 (1987). The record in Case 1-RC-19498 demonstrated that the overall working conditions, wage rates, qualifications, skills, training, contacts, and interchange of the two groups were not sufficiently disparate as to warrant a separate technical unit.

Since the date of the issuance of the Decision and Direction of Election in Case 1-RC-19498, the Board has implemented its rule for determining appropriate bargaining units in the health care industry. 29 CFR Sec. 103. That rule, however, is applicable only to acute care hospitals, and excludes nursing homes and psychiatric hospitals. 29 CFR 103.30(e)(2). In *Park Manor Care Center*, 305 NLRB No. 135 (Dec. 1, 1991), the Board addressed the standard to be used in determining appropriate units in nursing homes or other nonacute care facilities. In *Park Manor*, the Board articulated a "pragmatic or empirical community of interests" approach. This approach takes into consideration traditional

¹ The parties agreed that the facts developed in the record in Case 1-RC-19498, based on the Petitioner's earlier petition for a similar unit, are currently operative.

² Relevant portions of the Regional Director's dismissal letter and of the Regional Director's Decision and Direction of Election in Case 1-RC-19498, the underlying case, are attached as Appendices A and B.

³ In affirming the Regional Director's dismissal, we do not pass on the Regional Director's finding that the mental health workers are technicals nor the Regional Director's acceptance of the parties' stipulation that certain teachers are technicals since no party has requested review of these findings.

community of interest factors as well as background information gathered during rulemaking and prior precedent.

In the instant case, the Petitioner seeks a unit limited to all technical employees employed by the Employer at its Rockwell Center and Linden Lodge facilities. The Petitioner argues that current law supports its position that a unit limited to the Employer's technical employees is appropriate, while the Employer contends that changes in the law since rulemaking do not require a different result. The parties agree that there have been no meaningful factual changes since the issuance of the Decision and Direction of Election in Case 1-RC-19498.

To evaluate these contentions under *Park Manor*, I will look first to the Board's experience during rulemaking. Most of the Employer's operation, and of the unit petitioned-for, is a psychiatric hospital. During rulemaking, the Board received a great deal of evidence and input regarding appropriate units at psychiatric hospitals. Although the Board originally planned to apply the rules regarding unit determination to psychiatric hospitals, it eventually determined to exclude psychiatric hospitals from coverage of the rule and proceed on a case-by-case basis. The Board noted that psychiatric hospitals differ from other acute care hospitals in that therapeutic programs are highly integrated, there are more paraprofessionals (mental health workers), and all employees are specially trained in relating to patients as all employees' actions have an impact on patient care. 53 Fed. Reg. 33930, 284 NLRB 1515, 1570 (1984).

The significant other component of the Employer is a nursing home. During rulemaking, the Board observed that there is generally less diversity in nursing homes among technical and service employees, and that the staff as a whole is more integrated than in acute care hospitals. The Board also noted that there generally was a greater overlap of functions and greater work contact among non-professional employees in the nursing home environment. 53 Fed. Reg. 33928, 284 NLRB at 1567-1568.

During rulemaking, the Board's examination of technical employees at acute care hospitals supported the notion that these employees share their own community of interest such as to constitute an appropriate unit. The Board found that technical employees in acute care hospitals are becoming more specialized and highly educated, and that in general the gap between technical employees and service employees is widening. The Board also observed that in acute care hospitals the wage disparity between technical employees and non-technical, non-professional employees is great; that technical employees do not usually work in patient care areas; and that there is little cross-training or interchange between the two groups. 53 Fed. Reg. 33918-33919, 284 NLRB at 1553-1555.

The next consideration under *Park Manor* is precedent prior to rulemaking. There is not a wealth of case law prior to rulemaking regarding units limited to technical employees at psychiatric hospitals. The limited precedent that exists does not disclose a general rule applicable to such institutions. For instance, in *Mount Airy Psychiatric Center*, 217

NLRB 802 (1975), the petitioner requested a unit consisting of nursing assistants, therapists, and ward secretaries, although it expressed its willingness to represent LPNs (technical employees) if they should be found to be appropriately within the unit. The employer contended that the only appropriate unit must consist of all non-professional employees, including technical employees. The Regional Director determined that the LPN's were appropriately included in the unit with the nursing assistants and therapists. Upon review, the Board concluded that the only appropriate unit was a hospital-wide unit of all non-professional employees of the employer, including technical employees. In *Milwaukee Psychiatric Hospital*, 219 NLRB 1043 (1975), the Board determined that technical employees could be excluded from the requested unit of service and maintenance employees. In support of its determination, the Board in *Milwaukee Psychiatric Hospital* cited cases involving acute care hospitals in which technical employees had been excluded from requested units of service and maintenance employees.

Prior precedent involving nursing homes is more extensive than that involving psychiatric hospitals, but similarly escapes categorical rules. In cases prior to *St Francis II*, the Board observed that the duties and responsibilities of LPNs (the largest and most typical group of technical employees at nursing homes) vary considerably from one nursing home to another. Accordingly, the Board stated that they could be included in overall units of non-professionals, or in a unit limited to technical employees based upon a showing of a substantial community of interest among themselves which is separate and distinct from the broader interests they share with other nursing home employees. *Medeira Nursing Center, Inc.*, 203 NLRB 323, 325 (1973). Thus, the determination that employees were technicals did not mandate their exclusion from a broader unit; rather, community of interest factors were examined. *Park Manor*, supra, slip op. at 6. After the issuance of *St Francis II*, as stated above, "sharper than usual differences" had to be demonstrated in order to justify separate smaller units for technical employees.

The application of background information gathered during rulemaking, prior precedent, and community-of-interest factors in the instant case require the conclusion the petitioned-for-unit, limited to technical employees of that Employer, is not appropriate. The lessons regarding psychiatric hospitals and nursing homes learned during rulemaking that caused the Board to exclude them from the rule applicable to acute care hospitals are exemplified by the Employer. Thus, the Employer's paraprofessionals have much more in common with other non-professional employees than is the case in acute care hospitals. They are highly integrated with other employees and all employees are trained in relating to patients. As in the general nursing home experience, there is a great deal of overlap and contact between the Employer's technical employees and other non-professionals. These considerations militate against the application of the Board's rule to Employer and against representation of technical employees of the Employer in a separate unit.

Unlike the technical employees of acute care hospitals discussed by the Board during rulemaking, the Employer's technical employees do not have substantial educational advancement beyond the other non-professional employees, and often share the same level of educational and in-service training. There is not a wide gap between the pay structure of the two groups. On the contrary, the wage groupings are remarkably similar. In all other respects, the two groups share identical working conditions. The interchange and performance of common duties among the two groups also demonstrate that all of the Employer's non-professional employees are closer in skill level and have more in common than is usually the case in acute care hospitals. As the Board noted during rulemaking, in the typical case involving technical employees in acute care hospitals, such transfers, contacts, and integration would be impossible.

Unlike acute care hospital technical employees, the Employer's technical employees are directly involved in patient care. Although the staff is large, an examination of the duties of all employees of the Employer reveals that the specialized staffing and lack of contact often seen in large institutions are not present here. See 284 NLRB 1567-1568. Thus it appears that the Employer's technical employees are vastly different from the technical employees in acute care hospitals that are, under the rules, appropriately entitled to representation in their own unit.

Prior precedent also suggests that the Employer's technical employees cannot constitute a separate appropriate unit. In *Mount Airy*, supra, the Board included technical employees in a unit with non-professionals. Although the Board found a technical unit appropriate in *Milwaukee Psychiatric Hospital*, supra, it did so citing cases from the acute hospital model. It is uncertain, after rulemaking, that cases involving acute care hospitals would be applicable to the Employer. Moreover, *Milwaukee Psychiatric Hospital* was decided early in the Board's experience with the health care industry and before the differences between acute care hospitals and psychiatric hospitals was observed to be so dramatic. Precedent regarding nursing homes before *St. Francis II* essentially requires a close examination of the precise duties, qualifications, and interests of the technical employees as compared to other non-professionals. As mentioned above, the duties, qualifications, and interests of the Employer's technicals are virtually identical to those of other non-professionals. The application of the *St. Francis II* precedent has already resulted in a determination that a unit limited to the Employer's technical employees is not appropriate.

In summary, the investigation disclosed that there is functional integration and a community of interest between the Employer's technical employees and other non-professional employees that renders a unit limited to technical employees inappropriate.

I am, therefore, dismissing the petition in this matter.

APPENDIX B

5. The Employer is a private, nonprofit, health care institution engaged in the treatment of psychiatric and addictive diseases, and in providing longterm care and vocational rehabilitation at its Brattleboro, Vermont facility. The Petitioner seeks to represent employees in a bargaining unit limited to the technical employees employed at the Employer's Rockwell Center facility, including licensed practical nurses, men-

tal health workers, adolescent care workers, day coordinators, pharmacy technicians, recreational specialists, chemical dependency counselors, discharge planners, X-ray/EEG technicians, and laboratory/clinical technicians.

The Employer first contends that the bargaining unit must include employees under the entire corporate umbrella of the Employer. The Employer next contends that the appropriate unit must include all nonprofessional employees of the Employer. The Employer also claims that certain of the classifications sought by the Petitioner are not technical employees. The classifications in issue include mental health worker, discharge planner, chemical dependency counselor, and adolescent care worker.³ The Employer would also include in any technical unit the classifications of teacher aide and quality assurance assistant, while the Petitioner contends that the quality assurance assistant is not a technical employee and takes no position on the technical status of the teacher aide. In addition, the parties placed the classifications of day coordinator and staff accountant before the Regional Director for a determination of their status as technical employees. The parties also disagree about the supervisory status of Brenda Gilfallan, adolescent care worker III. Finally, the parties disagree on the eligibility formula for per diem employees. There are approximately 145 employees in the petitioned-for unit, and about 535 employees in the Employer's proposed unit.

A. Employer Status

The parent corporation of the Employer is Brattleboro Retreat, which is governed by a four-member board of trustees. Brattleboro Retreat has a chief executive officer, C. Richard Sarle, and two vice presidents. One of the vice presidents, William Stearns, is responsible for the areas of personnel, education, public relations, media services, child care, and the Wheeler Vocational Center. The second vice president, Christopher McGowan, is responsible for the business office, information services, materials management, payroll, patient accounting, and nutritional services.

There are three wholly owned subsidiaries of Brattleboro Retreat: Rockwell Center Corporation, Resource and Development Corporation, and Linden Lodge Corporation. Each of the subsidiaries has its own board of directors, which is appointed by the board of trustees.

Rockwell Center is headed by Medical Director Dr. Chester Switt. The bulk of the direct patient care and rehabilitative services provided by Brattleboro Retreat falls under the Rockwell Center corporate organization. The departments of Rockwell Center include inpatient and outpatient care, academic research and education, nursing, social work, therapeutic activities, psychology, addictions, and dietary. The hospital is licensed for 149 beds, there are an additional 20 residential beds in the adult alcohol recovery unit, and 19 beds in the adolescent transitional facility. The activities of Rockwell Center occur in the many buildings of the Employer's main campus. These buildings include the main adminis-

³ Although the Employer took no position on the unit placement of these classifications at the hearing, in its posthearing brief the Employer argues that these classifications are not technical.

tration building,⁴ the Osgood Building,⁵ the Tyler Building,⁶ Ripley Center,⁷ and Lawton Hall.⁸ Two adolescent transitional houses operated by Rockwell Center are located approximately 500 yards from the main campus.⁹

Linden Lodge Corporation operates the Linden Lodge nursing home. This 117 bed, longterm care facility is located across the street from the administration building. Linden Lodge is connected to the main campus by an underground tunnel. The chief executive officer at Linden Lodge is Roberta Bremmer. Linden Lodge has its own director of nursing and director of therapeutic activities.

The residents at Linden Lodge consist of elderly persons or others who are physically unable to live alone, as well as some younger persons who are incapacitated or who have a chronic life long psychiatric illness accompanied by physical nursing needs. The patient population of Linden Lodge is distinct from that of Rockwell Center.

The Research and Development Corporation is headed by Sarle. This corporation manages the corporate assets, a country club, land development, staff housing, and a farm.¹⁰

All fiscal, bookkeeping, and accounting functions for all corporate entities are performed by Rockwell Center. Grounds and maintenance employees under the Rockwell Center corporate structure perform systemwide maintenance and repairs. The data processing and word processing functions of Rockwell Center service all locations. The nutritional services department and the housekeeping department of Rockwell Center service Linden Lodge as well. The patients and staff of Linden Lodge use the laboratory and X-ray services of Rockwell Center. The board of trustees of Brattleboro Retreat has the ultimate authority for all wages, benefits, and personnel policies for all of the corporate subsidiaries. The general function of the various boards of directors in this regard is to make recommendations to the board of trustees.

The Rockwell Center human resource department handles labor relations for all corporate elements. The human resource department conducts applicant screening and initial interviewing,¹¹ and must approve all departmental discipline

and discharge determinations.¹² The human resource department has formulated a single employee handbook, and that handbook is applicable to all employees of each of the corporate subsidiaries.

The human resource department has developed a wage and salary structure for all employees in the system. This wage and salary program is divided into 18 hourly pay grades, and is shared by all employees.¹³ The human resource department is the central depository for all personnel records of all employees in the system. Employee evaluations are performed on an annual basis, after completion of the probationary period, and the same point system is used throughout the system.

All employees of the system are eligible for benefits if they are regularly scheduled to work 24 or more hours a week. All employees are covered by the same Flexible Benefit Program, and receive the same holidays, personal days, retirement plan, vacation benefit, sick days, and other benefits. All employees are entitled to use the employee child care center. There is a single internal grievance procedure applicable to all employees. All employees throughout the system share the employee cafeteria, located in the Tyler building. Employees of Linden Lodge use the vehicles owned by Rockwell Center. Job posting is systemwide, and any qualified employee may bid on any vacancy regardless of corporate affiliation. An employee who transfers between Rockwell Center and Linden Lodge retains his/her original hire date.

Of the current Linden Lodge employees, 20 were transferred from positions at Rockwell Center.¹⁴ Of the current Rockwell Center employees, 10 were transferred from Linden Lodge.¹⁵ The Employer also presented evidence that other employees have worked at both Rockwell Center and Linden Lodge during their careers, although they did not transfer directly from one to the other.

for all positions throughout the system. The human resource department conducts a preliminary interview, and then the division in question conducts subsequent interviews and makes recommendations as to hires. The human resource department then checks references, offers the job, sets the salary and starting date, and conducts a 2-day orientation program.

The human resource department makes the decision as to whether any given job opening will in fact be filled. The human resource department has overruled a department's decision to hire an individual after the individual failed to pass the department's reference check procedures.

¹²Evidence was presented at the hearing that the human resource department has the authority to, and in fact has, overruled discharge determinations of department heads. In cases where discharge is approved, the human resource department conducts the exit interview.

¹³Thus, employees in different corporate entities that share job classifications may be placed in identical pay grades.

¹⁴The exact number of employees employed at Linden Lodge is unclear from the record, but it appears to be approximately 111.

The time period covered by the Employer's exhibits containing transfer and interchange information is 10-14 years.

Of the 20 employees who have worked at Rockwell Center, 8 formerly worked in technical positions that the Petitioner would include in its proposed unit.

¹⁵Of these, three are currently employed in positions that the Petitioner would include in its proposed unit.

⁴The administration building houses the professional offices, the personnel department, conference centers, administrative offices, the Meadows School, and outpatient services. Plant maintenance is located near the outpatient services area.

⁵The Osgood Building contains the dual diagnosis treatment program, the adolescent program, therapeutic activity rooms, and a gift shop.

⁶The Tyler building contains the adult psychiatric program, an adolescent psychiatric unit, the nutritional services department, the pharmacy, the laboratory, the X-ray department, and the employee cafeteria.

⁷Ripley contains a residential program for the treatment of adults with substance abuse problems but without a psychiatric disorder.

⁸Lawton Hall contains the Mulberry Bush Child Care Center.

⁹The parties agree that Cedar Street and 104 Linden Street transitional houses are part of Rockwell Center and should be included in the bargaining unit.

¹⁰This corporation has no employees within the meaning of the Act. The parties stipulated at the hearing that employees of the farm should be excluded from any unit found appropriate on the ground that they are agricultural laborers.

¹¹The human resource department advertises for candidates or engages in internal postings, and receives applications from candidates

The Employer contends that all corporate entities of Brattleboro Retreat constitute a single employer under the Act, and that the scope of any bargaining unit must include all the corporate entities that comprise Brattleboro Retreat. The Petitioner appears to contend that the corporate entities do not comprise a single employer. In any case, the Petitioner argues, Rockwell Center and Linden Lodge constitute separate facilities and should therefore constitute separate appropriate bargaining units.

In determining whether two or more entities constitute a single employer, the Board has traditionally applied four criteria: common control of labor relations, common management, common ownership or financial control, and interrelation of operations. *Radio Union v. Broadcast Service*, 380 US 255, 256 (1965); *Parklane Hosiery*, 203 NLRB 597, 612 (1973), amended 207 NLRB 991 (1973). The fundamental inquiry is whether there exists overall control of critical matters at the policy level. *Emsing's Supermarket*, 284 NLRB 302 (1987). None of the criteria alone is controlling, and the determination of single employer status ultimately depends on all of the circumstances of the case. *Id.* In weighing the criteria, however, the Board has indicated that the degree of common control over labor relations policies is a critical factor. *Soule Glass & Glazing Co. v. NLRB*, 625 F.2d 1055, 1075 (1st Cir. 1981), *enfg.* in relevant part 246 NLRB 792 (1979); *Gerace Construction*, 193 NLRB 645 (1971).

I conclude that all of the corporate entities within the umbrella of the parent corporation constitute a single employer. Each is a wholly owned subsidiary of Brattleboro Retreat, and each is ultimately responsible to the board of trustees of Brattleboro Retreat. Accordingly, they clearly have common ownership and management. *American Stores Packing*, 277 NLRB 1656, 1657 (1986). The operations of the various corporations are integrated in meaningful ways. Rockwell Center provides elements of patient care to Linden Lodge, including dietary services, housekeeping, laboratory services, and transportation. Administrative records, maintenance services, mail services, and many other operational services are provided by Rockwell Center to Linden Lodge.

It is clear that the management of Rockwell Center has almost complete and total control for the formulation and implementation of labor relations policies for Linden Lodge. The board of trustees of Brattleboro Retreat makes all policy decisions regarding wages and benefits. The human resource department of Rockwell Center makes labor relations policy for all employees of all corporations under the Brattleboro Retreat umbrella, and is directly involved in decisions regarding employee hire, discharge, discipline, wages, and benefits. There is evidence of some permanent interchange of employees between Rockwell Center and Linden Lodge.¹⁶ Accordingly, I find that Rockwell Center, Linden Lodge Corporation, and Research and Development Corporation constitute a single employer within the meaning of the Act.

B. Unit Scope: Single vs. Multifacility

The Petitioner next argues that employees at Linden Lodge constitute a separate facility of the Employer and do not share a community of interest with other employees of the

Employer. The Employer argues that a multilocation facility is the only appropriate unit.

A necessary predicate to an analysis of appropriate units of a multifacility employer is the existence of more than one facility. In this case, I find that there is only one "facility." Linden Lodge is located about 100 yards from the administration building, across the street, and connected to the main campus by an underground tunnel. It is closer to the administration building than are the adolescent care houses of the Employer that are stipulated to be part of any bargaining unit. It appears that Linden Lodge is closer to the administration building than are Lawton Hall or Ripley Center.¹⁷ In reality, Linden Lodge is more akin to a separate building of one facility than to a distinct facility.

Assuming *arguendo* that Linden Lodge is a separate facility, however, I would find that the community of interest of employees of Linden Lodge is so intertwined with that of the remaining employees such as to require that they belong in one bargaining unit. It is well established that, when considering a multifacility operation in the industrial model, a single facility unit is presumptively appropriate for collective bargaining. *Dayton Transport Corp.*, 270 NLRB 1114 (1984). This presumption can be overcome by showing a functional integration so substantial as to negate the separate identity of the single facility unit. *Globe Furniture Rentals*, 298 NLRB 288 (1990). To determine if the presumption has been rebutted, the Board looks to such factors as centralized control over daily operations and labor relations; skills and functions of employees; general working conditions; bargaining history; employee interchange; and distance between locations. *Sol's*, 272 NLRB 621 (1984).¹⁸

The Board has adopted the presumption that a single facility bargaining unit is appropriate in the health care field. *Manor Healthcare Corp.*, 285 NLRB 224 (1987). In *Manor Healthcare*, the Board stated that this presumption may be rebutted by evidence that reasonably tends to show that the single facility unit is inappropriate. *Id.* at 227.

Here, under traditional standards, a separate unit limited to Rockwell Center employees would be inappropriate. The two facilities are only a few yards apart. There is total administrative centralization. Evidence of substantial functional integration includes dietary, laundry, housekeeping, power plant, and maintenance services provided by Rockwell Center employees for Linden Lodge. The laboratory, X-ray, and similar technical needs of the nursing home are provided by Rockwell Center.

Labor relations policies and programs are administered centrally in all respects. All employees of the Employer share common working conditions, including a common cafeteria.¹⁹ Employees share job classifications and a common

¹⁷ Although the precise distances between buildings on the main campus are not noted in the record, a review of the map of the Employer (Emp. Exh. 1) plainly shows the relative distances of the various buildings.

¹⁸ A determination that two entities constitute a single employer does not establish that an employerwide unit is appropriate. *South Prairie Construction Co. v. Operating Engineers Local 627*, 425 U.S. 800, 805 (1976); *G.M. Trimming, Inc.*, 279 NLRB 890, 895 (1986).

¹⁹ There is record evidence of contact between employees at Linden Lodge and Rockwell Center. For a more complete discussion of

Continued

¹⁶ An absence of interchange would not mitigate against a finding of single employer status in these circumstances. *Jerry's United Super*, 289 NLRB 125, 135 (1988).

wage structure. Similarly classified employees, such as LPNs, perform similar duties. Although there is little record evidence regarding temporary employee interchange, there has been some transfer of employees between Linden Lodge and Rockwell Center, which also tends to show that separate units are not appropriate. *Resident Home for the Mentally Retarded*, 239 NLRB 3, 7 (1978).²⁰

In addition, there is reason to believe that a multifacility finding here would present some likelihood of harm to the public interest. *Manor Healthcare*, supra at 226–227. The approval of a single facility unit limited to Rockwell Center could threaten the continuity of patient care for residents of Linden Lodge. The services that employees of Rockwell Center provide to Linden Lodge are vital to patient welfare. I find these potential adverse consequences further support a multifacility unit here. *West Jersey Health System*, 293 NLRB 749 (1989) (single facility unit not appropriate where there was centralization of labor relations, evidence of permanent interchange of employees, functional integration, and the possibility of adverse consequences at one facility by the interruption of laboratory and food services at another facility); *Mercywood Health Bldg.*, 287 NLRB 1114, 1116 (1988).²¹

C. Unit Scope: Technical Employees

The Petitioner is seeking a unit limited to technical employees, while the Employer contends that only a unit of all nonprofessional employees is appropriate. In order to address this issue, however, the technical or nontechnical status of certain classifications must be resolved.

D. Mental Health Workers

The Petitioner contends that the mental health workers (MHW) are technical employees. The Employer contends that the MHWs are nonprofessional, nontechnical employees.²²

There are approximately 130 MHWs employed by the Employer.²³ MHWs are assigned case loads of four to seven patients. The job duties of the MHW I position include: addressing the needs of the patients by participation in treat-

ment team consultations and meetings;²⁴ assisting with the physical care needs of the patients; escorting patients throughout the campus; maintaining patient safety; setting limits on patient behavior; carrying out interventions as designated by the treatment team or the nursing plan,²⁵ including physical interventions; observing patients and documenting observations and interventions on patients' charts; and the care and maintenance of patient property. MHWs meet with patients on an individual basis regularly to discuss problems and make assessments of their welfare. MHWs can adjust the points awarded to patients for the determination of the level of patients' privileges.

The position of MHW II involves increased responsibility along the same lines, including assignments to more difficult patients. Performance at a higher level is expected from the MHW III classification.

The treatment teams meet once or twice a week on a formal basis.²⁶ At these meetings, the team discusses patients' status and treatment, and plans courses of action and interventions. The MHWs have input into the treatment plans of patients on their case load by gathering data and making suggestions that contribute to the team's comprehensive treatment plan. In addition to formal team meetings, members of the treatment team interact continuously throughout the day to discuss patient status, to deal with crisis situations, and to assess the progress of the treatment plan.

MHWs observe patients and make a judgment as to whether to intervene immediately on their own or to contact a nurse or a physician to intervene. If necessary, MHWs will intervene with patients not on their regular case load.

The entry level position in this classification is MHW trainee. An applicant for this position must have a high school diploma and a valid driver's license. After hire, the trainee receives a 3-week orientation program in which they are trained in psychiatric terminology and basic procedures. The trainee is then assigned patient care duties under the guidance of more senior MHWs. An employee spends 6 months as a trainee, after which he/she becomes a MHW I. After completion of 1 year (or 2080 hours) of employment and an educational requirement, discussed below, the employee is eligible for promotion to MHW II. Three years of additional employment and further educational requirements, discussed below, can lead to promotion to MHW III.

MHWs I and II must each receive 10 hours of in-service training each year. MHWs III must complete 15 hours of in-service training each year. These requirements are usually satisfied by attendance at seminars presented by staff at the Employer. The Employer's human resource department must verify these educational requirements before an employee

the contact between the various classifications, see the discussion regarding "disparity of interests" infra.

²⁰ In the prior, recent case involving this Employer, the parties stipulated to exclude employees of Linden Lodge from an all professional unit. The matter was not litigated. In light of the facts and policies here at issue, I do not view that stipulation as binding on the outcome in the instant case.

²¹ In *Manor Healthcare*, supra, the Board found a single facility bargaining unit appropriate where the facilities in issue were at least 10 miles apart and where there was no functional integration. In *Mercywood*, supra, the Board found that a single facility unit was appropriate within the meaning of *Manor Healthcare*, supra. Each of those cases is distinguishable from the instant case. In *Mercywood*, supra, the employer moved its patient care facility to a new location adjacent to other medical facilities operated by it. The employees of *Mercywood* had a history of collective bargaining prior to the move. In addition, there was little evidence of functional integration in either of those cases and no evidence that a unit limited to the represented employees could cause a danger to patient care.

²² In Case 1-RC-19451, the Employer took the position that the mental health workers were professional employees within the meaning of the Act.

²³ This number includes per diem MHWs.

²⁴ Each patient is assigned to a "treatment team." The team consists of both professional and nonprofessional employees who are primarily responsible for the patient's well being. The team consists of a MHW (or adolescent care worker), a physician, a social worker, a nurse, a representative from the therapeutic activities department, and a discharge planner.

²⁵ The nursing care plan is designed by the team nurse and sets forth the guidelines for general intervention. According to testimony at the hearing by a MHW and by a representative of the Employer, patient assessment, and some degree of judgment is involved in the interpretation and application of the nursing care plan interventions.

²⁶ It appears that teams on different units may vary the frequency of formal meetings.

will be promoted to the next level. Each year, these employees must also attend 3 hours of training in CPR and aggression management techniques, and 1 hour of training in infection control.

At least 55 of the MHWs have received a college degree. Although many of those degrees are in the areas of psychology or sociology, many are in areas apparently unrelated to the duties of a MHW. Evidence was introduced at the hearing that some number of MHWs without a college degree have varying amounts of college credits. The Employer presented evidence that it had no preference for college degrees when hiring MHWs. No certification is required in Vermont in order to become or remain a MHW.

The Board has defined a technical employee as an employee who does not meet the strict requirements of the term “professional employee” under the Act, but whose work is of a technical nature involving the exercise of independent judgment and requiring specialized training usually acquired in colleges or technical schools or through specialized courses. *Southern Maryland Hospital Center*, 274 NLRB 1470, 1471 (1985). In *Barnert Memorial Hospital*, 217 NLRB 775, 776 (1975), the Board stated that an employee’s status as a technical employee is frequently evidenced by certification, registration, or licensing; however, the Board stated employees may meet the standards of technical status without being certified, registered, or licensed.

The Board has historically found mental health workers that perform duties similar to those of the MHWs here to be technical employees. *Butler Hospital*, 250 NLRB 1310 (1980); *Community Health Services*, 259 NLRB 362 (1981).

Here, as in *Butler*, supra, although the MHWs are not certified, licensed, or registered, many have college backgrounds, and they receive on-the-job training of a specialized nature from the Employer’s staff. The MHWs here, as in *Butler*, supra, are part of the treatment team, and their jobs require daily consultation with the professional staff. As in both *Community Health Services*, supra, and *Butler*, supra, the MHWs observe and report on patients, record comments on their physical and emotional condition on patients’ charts, and interact with patients in therapeutic interpersonal relationships. The MHWs exercise independent judgment on a regular basis in their intervention decisions, in patient consultations, and in their contributions to, and interactions with, the treatment team. Accordingly, I find the MHWs to be technical employees.²⁷ *Butler Hospital*, supra at 1311; *Community Health Services*, supra at 363.

²⁷ It is not clear from the Petitioner’s posthearing brief whether the Petitioner contends that the trainees are technical employees and should be included in the unit. In any case, I find that the trainees are essentially receiving on-the-job training under the guidance of skilled employees as they further develop their technical skills. The record supports the conclusion that the trainees are involved in patient care in much the same way as the MHWs. They appear to be technical employees, and should not be excluded from the unit merely because of their trainee status. Cf. *Beechen Ancillary Services*, 225 NLRB 642 (1976) (record supports finding that technologists-in-training, receiving on the job instruction from technical employees, are technical employees).

E. Adolescent Care Workers

The Petitioner contends that adolescent care workers (ACW) are technical employees, while the Employer argues that they are nontechnical employees.

ACWs are employed at the two adolescent care residential homes at 104 Linden Street and Cedar Street. The parties agree that ACWs are in essence mental health workers, albeit with a different patient population. ACWs’ duties are to provide a safe therapeutic environment for the adolescents at the homes. ACWs are members of the treatment team for these patients, along with the medical director, the clinical director, the chemical dependency counselor, the discharge planner, the house charge and assistant house charge, the social worker, and the day coordinator. The treatment team meets formally once a week, as well as informally, to discuss patient status and treatment plans. The ACWs interact with patients, observe patients’ behavior and bring those observations to the treatment teams, and join in the assessment of the patients’ welfare. Other tasks include: the development of treatment outcomes;²⁸ escorting patients to activities and meetings, including alcoholics anonymous meetings; documenting observations on patients’ charts; organizing leisure activities; supervising patients’ housekeeping activities; providing comfort to patients when necessary; and monitoring patients’ medications.²⁹ ACWs can reward patients by granting them points to attain additional house or campus privileges.

There are three levels of ACW. In order to be hired as an ACW I, an applicant must have a high school diploma. Related college level courses are highly desirable. The requirement for the ACW II position is a high school diploma, with a bachelor’s degree from an accredited college or university in subject areas related to the mental health field preferred. In addition, the ACW II must have 1 year’s experience in residential programs, and 2 years of experience working clinically with adolescents is preferred. An ACW II is eligible for promotion to ACW III after 6 months of experience in the ACW II position. Evidence was presented at the hearing that many ACWs have college credits or college degrees.

There is no licensing or certification requirement for these positions. ACWs receive CPR certification, infection control training, and aggression management training each year. ACWs are required to have 6 hours of in-service education a year, and are encouraged to attend additional in-service seminars and to avail themselves of outside educational activities.

The ACWs perform virtually the same job duties as do the MHWs. Although they are not licensed, certified, or registered, and although they are not required to have advanced training at the time of hire, these employees are part of the treatment teams. They interact with patients in a one-on-one

²⁸ A treatment outcome is a list of three or four outcomes, designed when a patient is admitted, directed toward strengthening behaviors related to sobriety. A standardized list of treatment outcomes is posted at the houses. The ACWs can use outcomes from the list or devise their own, subject to discussion with the entire treatment team.

²⁹ ACWs must be familiar with the side effects of patients’ medications, and can call a doctor or a nurse if they believe a problem requires it. The ACWs may themselves decide if a patient needs a minor medication, such as a headache remedy.

therapeutic environment, observe and assess patient's physical and emotional well being, work with other members of the treatment team to design and implement patient care plans, and determine when to intervene. They receive on-the-job specialized training and inservice education. They thus exhibit the level of independent judgment in the course of their duties that is indicative of technical employees in this area. *Butler Hospital*, supra.

F. Day Coordinators

The Petitioner contends that the classification of day coordinator is a technical position. The Employer took no position on this classification in its posthearing brief.

The day coordinators³⁰ are ACWs who spend 50 percent of their time performing the functions of an ACW and 50 percent performing clerical duties relative to the operation of the adolescent houses. The day coordinator is stationed at the house while the adolescents are at school and is responsible for being at the house if one of the adolescents needs to return to the house from school or the Wheeler Vocational Center. When not performing clerical duties, the day coordinator is overseeing and supervising patients; assisting in the implementation of patients' treatment plans; documenting observations and interventions in patients' medical records; spending time with patients in planning and carrying out program activities; and attending treatment plan meetings and discussing patient status with treatment team members.

The day coordinators spend at least half of their time performing ACW duties, and I have found that those are technical in nature. They are members of the treatment team, and report their observations of the patients to the team while assisting in the development of the overall treatment plan. Accordingly, since the day coordinators perform technical duties, I find them to be technical employees. To the extent that it can be argued that they are dual-function employees, I would find that they share duties, supervision,³¹ and working conditions with the ACWs such as to share a community of interest with them and, in any case, be included in a bargaining unit with them. *Oxford Chemicals*, 286 NLRB 187 (1987); *Berea Publishing Co.*, 140 NLRB 516, 519 (1963).

G. Discharge Counselors

The Petitioner contends that the discharge counselors are technical employees, while the Employer argues that they are not technical employees. The Employer employs eight discharge planners. They are responsible for the implementation of all aspects of the patients' plans upon discharge from the Employer, and for arranging any necessary aftercare. They are part of the treatment team. Their duties are to gather information in the community about available resources and bring this information back to the treatment team for discussion and analysis. The team then works together to apply the available resources to the patients' needs, and the discharge counselors implement the discharge plans created by the treatment team. The discharge counselors interact continuously with MHWs, nurses, LPNs, social workers, and doctors

to determine patients' needs. The discharge counselors also meet with the patients and families to discuss discharge planning, meet with school officials to discuss discharge planning for adolescents, represent the Employer at community organizations, appear in court when necessary to present the treatment team's discharge plan and to amend it as necessary, and oversee the patients' financial status upon imminent discharge.

The job description for this position states that a bachelor's degree in the human resource field is required. Of the eight discharge counselors, five have at least a bachelor's degree.³² There is no state licensing or certification for discharge counselors. Discharge counselors report to the chief social worker. Discharge counselors are paid on a salary basis.

The duties of the discharge counselors require the use of independent judgment that is characteristic of technical employees. This judgment and discretion are evidenced by their one-on-one therapeutic meetings with patients and families; their role in assessing patient needs, researching resources, and determining care plans along with other members of the treatment teams; their representation of the Employer with outside agencies; and their interacting with court personnel to adjust patient care plans. Although there is no licensing or certification for this position, the discharge counselors must have a bachelor's degree in the field in which they will practice. Accordingly, I find that the discharge counselors are technical employees. *Butler Hospital*, supra; *Duke University*, 226 NLRB 470, 473 (1976) (social service representatives).³³ The cases cited by the Employer do not require a different result. In both *Samaritan Health Services*, 238 NLRB 629 (1978), and *Child & Family Services of Springfield*, 220 NLRB 37 (1975), the classifications at issue (social worker assistant and social worker associates, respectively) were found not to be professional employees within the meaning of the Act. The technical status of those employees was not addressed.

H. Chemical Dependency Counselors

The Petitioner contends that the Chemical Dependency Counselors (CDC) are technical employees, while the Employer argues that they are nontechnical employees. There are ten employees in this classification.

The CDCs provide individual drug and alcohol counseling to patients. They are part of the treatment teams, and work with the doctors, nurses, and social workers to develop individual treatment plans for patients. They perform assessments

³⁰ It is unclear from the record whether there is one day coordinator or two at the current time.

³¹ The ACWs and day coordinators are all supervised by the house charge and assistant house charge, who the parties have stipulated to be supervisors within the meaning of the Act.

³² At one time, the Employer waived the degree requirement for certain employees who had previously been employed by the Employer in another position for a substantial period of time. Testimony at the previous hearing in this matter was to the effect that the degree requirement will be required of all future applicants.

³³ In *Duke University*, the Board found that employees performing duties similar to those of the discharge counselors were either technical or professional employees. In the prior, recent decision involving this Employer, I found that the work of the discharge counselors did not demand the advanced level of specialized knowledge which is required for social workers or other professional employees. No party in this case contends that the discharge counselors are professional employees.

of patients at the time of entry.³⁴ They conduct group or individual therapy with patients, and determine the content of those sessions. They work with discharge counselors in assessing community resources and continuing care facilities, and they may drive patients to community programs. They give instructive lectures at the Employer on subjects related to their field. Although all CDCs perform essentially the same tasks, the CDCs in the Ripley program have more contact with families of patients than do the CDCs in the Osgood programs because the Ripley program does not have a social work staff.

The entry level position in this classification is CDC trainee.³⁵ The requirements for this position are a high school diploma and completion of, enrollment in, or willingness to pursue academic course work required for certification as a CDC I (infra). In addition, at least 1 year of satisfactory employment at the Employer and 1 year of experience with the population similar to that served is required.³⁶ The next level in this classification is CDC I.³⁷ CDC I requires certification as a chemical dependency counselor by the state of Vermont,³⁸ or immediate eligibility to initiate the process. To obtain certification, CDCs must have 2 years of experience, 180 hours of specific training, and satisfy a test of the knowledge, skills, and competency related to addiction counseling. Most trainees of the Employer attended the New England School for Alcohol Studies to satisfy the educational requirement of certification.³⁹

The CDCs work in individual and group counseling sessions toward a therapeutic purpose. As members of the treatment team, they report their observations and assessments of patients and assist in the design of a care plan, and exercise judgment in making recommendations. Although they may be hired with only a high school education, they are required to take specialized courses and training to become certified. I find that the CDCs receive specialized training and exercise the degree of discretion and judgment in a therapeutic environment that is indicative of technical status for employees in the mental health field. *Butler Hospital*, supra.

The cases cited by the Employer in support of its position that CDCs are not technical employees are, in my view, distinguishable. In *Mount Airy Psychiatric Center*, 217 NLRB 802 (1975), the employer's only requirement for the position of alcoholic treatment counselor was that the employee be "empathetic of the alcohol user by personal experience." See 217 NLRB at 803 fn. 3. The counselors in *SODAT, Inc.*, 218 NLRB 1327, 1328 (1975), received no training and were working in the employer's program as part of their own re-

coveries. The alcoholism counselors in *St. Catherine's Hospital*, 217 NLRB 787, 789 fn. 18 (1975), had no apparent licensing or certification. The alcoholism counselors in *Milwaukee Psychiatric Hospital*, 219 NLRB 1043 (1975), only received 6 weeks of counseling workshop seminars as their educational requirement. Here, the CDCs receive greater specialized training, over a longer period of time, than any of the classifications in the cited cases. Most importantly, however, the CDCs here exercise a greater degree of independent judgment than did the employees in the cited cases due to their individual and group counseling, their roles in designing care plans, and their roles on the Employer's treatment teams.

I. Unit Scope: Technical vs. Nonprofessional

The Petitioner contends that the technical employees share a community of interest and constitute a separate appropriate unit. The Employer contends that since the Employer is a health care institution, a separate technical unit is not appropriate and that only a unit of all nonprofessional employees is appropriate, including Meadows School employees, Mulberry Bush Child Care Center employees, quality assurance employees, and business office clerical employees.⁴⁰

The Employer has a hourly pay scale that consists of 18 grades. It also has a salary pay scale that consists of 20 grades. The employees found to be technicals are in the following pay levels: MHW Trainee—6; MHW I and II (night float)—7; ACW I—8; CDC Trainee—8; MHW II—8; pharmacy technician—8; laboratory and clinic technician—8; staff LPN—9; ACW II—9; recreation specialist—9; day coordinator—9; ACW III—10;⁴¹ charge LPN—10. The X-ray/EEG technician is in salary grade 54, which is roughly equivalent to an hourly grade 7. The discharge planner is in salary grade 58, which is roughly equivalent to an hourly grade 11.

Nontechnical employees are also paid in grades 6 to 11. Other than MHW trainees, all other employees paid at grade 6 are nontechnical employees. Of twelve positions paid at grade 7, 10 are nontechnical. Of the 19 classifications paid at grade 8, 13 would be excluded by the Petitioner from a technical unit. Of the 17 positions paid at grade 9, 12 are not in the unit requested by the Petitioner. Of the 14 non-supervisory positions paid at grade 10, only 3 are in the unit requested by the Petitioner.

There are a substantial number of nontechnical positions that fall in grades 5 and 6. There are also nonprofessional, nontechnical positions that fall above grade 11. These include applications programmers, HVAC coordinator, and community relations representative. The average wage rate for technical employees is \$8.69. The average rate for non-

³⁴ Initial assessments involve the completion of an assessment form that is then used at the treatment team planning sessions.

³⁵ A CDC trainee may begin performing tasks, with a reduced case load of four patients, at the conclusion of a 2-week orientation program. A CDC has a case load of six or seven.

³⁶ There is currently one CDC trainee employed at the Employer.

³⁷ There is a CDC II position, with supervisory and administrative responsibilities. At the hearing, the parties stipulated that John Moran, the only current CDC II, is a supervisor within the meaning of the Act.

³⁸ Certification within the State of Vermont is by the Vermont Alcohol and Drug Counselor's Association, which is a member of a consortium that represents 43 certifying bodies in the United States.

³⁹ Attendance at in-service courses offered by the Employer counts toward the educational requirement at the rate of one-third that of outside courses.

⁴⁰ There are other classifications, not discussed above, that the Employer would include in a technical unit. These include the staff accountant, the teacher aide at the Meadows school, and the quality assurance assistant. For purposes of unit scope determination, I have assumed, without finding, that these positions would be nontechnical positions. In view of my ultimate finding regarding unit scope, a determination of the technical status of these other classifications is not necessary.

⁴¹ See discussion infra regarding the supervisory status of Brenda Giffallan.

technical, nonprofessional employees is \$7.74.⁴² All employees of the Employer receive virtually identical fringe benefits.

Many of the technical positions require a high school education and in-service training. This includes the mental health workers, which compose, by far, the largest single group of technical employees. Almost all nontechnical, nonprofessional positions at the Employer require a high school education, while some require or encourage further education.⁴³ The skilled maintenance positions at the Employer require licensing or certification.⁴⁴

There was a great deal of evidence introduced at the hearing regarding work related contact between the various groups of employees employed by the Employer. The Employer presented evidence that MHWs have frequent contact with dietary employees when they escort patients to the cafeteria or when dietary employees deliver food; with media services employees when they pick up a video to show to patients; with library aides when they use the library on the patients' behalf, and with maintenance employees.⁴⁵ The Employer produced evidence that the ACWs have frequent contact with media services to get videos; with admissions department employees, to pick up a patient; and with pharmacy employees, to pick up medications. According to the Employer, CDCs have frequent contact with such nontechnical employees as unit clerks, who are involved in scheduling, and media services. LPNs have daily and frequent contact with nurses' aides, housekeepers, dietary employees, unit clerks, and administrative assistants; LPNs have frequent but brief interactions with financial assistants, the assistant activities director, and social workers. Recreation specialists are in contact with housekeepers when there is a spill or when they are needed to ready a room; with media services employees, to pick up materials; with the dietary department when ordering food for events; with the business office when picking up petty cash; and with the public relations employees to produce the monthly schedule of events.

The Employer introduced evidence regarding interchange of employees. Of 144 employees who have transferred between positions within the past 10 years, 33 technical em-

ployees transferred to nontechnical, nonprofessional positions and 23 nonprofessional, nontechnical employees have transferred to technical positions. Seven technical employees perform per diem work in nontechnical, nonprofessional positions at the Employer, and seven nontechnical, nonprofessional employees perform per diem work in technical classifications.

The Employer has various hours of work in its various occupations. In general, there are both technical and nontechnical employees whose occupations require 24 hour coverage and there are classifications in both groups that are scheduled only day shifts.

All employees of the Employer order supplies when necessary through the materials management department. The materials assistant has contact with individuals in each department of the Employer when supplies are ordered or special items are required. This includes daily contact with a member of the nursing staff and the laboratory technicians. This employee makes deliveries to the residential floors. All employees of the Employer are in contact with the data processing and word processing employees when necessary; with library employees when they visit the library or need assistance in locating information;⁴⁶ with maintenance department employees when something needs to be fixed; with medical records when necessary; and with telephone operators and receptionists as needed.

The Meadows School is the educational component of the Employer's in-patient adolescent program. It is located on the third floor of the administration building. The Director of the School is Ruth MacDonald. There is one school aide employed at this location. The school aide's duties include taking attendance, filing, and mailings. She has contact with the units when she calls to report disciplinary problems with students, and she has frequent contact with discharge counselors when preparation is made for a patient in the school to leave the Employer. The classification of teacher aide is also employed at the school. The duties of employees in this classification include one-to-one and group instruction, under the direction of the special education teacher, in the children's program.⁴⁷ The teacher aide is in contact with members of the clinical team about three times a week when she attends morning meetings.⁴⁸ The teacher aide may help the school aide type or file on occasion. The teacher aide position requires a high school education and involvement in a bachelor's program.

The Employer's quality assurance department is headed by Gail Lilly, director. The purpose of the department is to act in an oversight capacity to ensure high quality in all Em-

⁴² In its posthearing brief, the Employer computes the average rate for the technical classifications requested by the Petitioner as \$9.62, and the average rate for remaining nonprofessional, nontechnical classifications as \$9.25. I am at a loss to explain the difference in calculations. However, the difference in calculations results in, at most, a 7-percent difference in the differential between the two groups, and would not make a difference in my ultimate determination regarding unit scope.

⁴³ Candidates for the library assistant II position are preferred to have an associate's degree. The job descriptions for administrative assistant to the director of nurses, and social worker (an agreed upon nonprofessional position) indicate some college is desirable. Applications programmer and programmer analyst positions require a bachelor's degree, or equivalent.

⁴⁴ HVAC coordinator, plumber, and electrician all require licenses in their respective fields.

⁴⁵ The Employer presented evidence that this contact was frequent, and that MHWs could assist skilled and unskilled maintenance employees by clearing a work area of patients or obstacles. The Petitioner presented evidence that this type of contact was slight, and that it was sometimes limited to a brief phone call to the maintenance department or an entry in a maintenance log indicating the need for building maintenance.

⁴⁶ There was conflicting evidence on how often employees in various classifications use the library. The Employer presented evidence that mental health workers and adolescent care workers use it daily, the chemical dependency counselors and the LPNs use it weekly, the teachers at Mulberry Bush use it biweekly, the recreational specialists use it several times a week, and the business office clericals use it a few times a week. The Petitioner presented evidence that MHWs use it infrequently, and have little contact with library employees when they do use it.

⁴⁷ There is a teacher in the room with the aide at all times.

⁴⁸ Morning meetings are held at the school daily. The function of the meeting is to advise teachers of the status of the students, and to discuss problems and clinical issues concerning treatment programming and behavior management. The current aide is only scheduled to work on three mornings a week.

ployer functions. To educate staff about quality improvement, various project teams have been established. Although the exact members of each team depend on the issue being addressed, from time to time the teams include representatives of each department of the Employer. Also employed in this department is the quality assurance assistant. The duties of this employee include computer assisting and graphically representing the quality improvement data that is collected from the various departments. The assistant prepares reports for Lilly, who then shares them with interested persons. He may design a data base and make computer inputs necessary to generate the reports. The incumbent in this position has an associate's degree in graphic design, and is not certified or licensed.⁴⁹ He has worked with CDCs in the design of quality monitors. He has an office near the personnel department, although he works at his home about one-third of the time. He does not go on the patient floors.

The Mulberry Bush Child Care Center provides day care for children of employees of the Employer. It is located in the subbasement of Lawton Hall. There are five child care teachers and four assistants employed at Mulberry Bush.⁵⁰ The teachers are responsible for designing and implementing an early childhood program appropriate to the age of the children in the center. The aides assist the teachers in implementing the programs. These employees are subject to the same labor relations and personnel policies as all other employees of the Employer, and they share the same benefits. In the course of their duties they will have contact with recreational specialists, when scheduling activities or sharing equipment; and with any other employee who has a child at the center.

The Employer's business office employees are primarily located in the administration building. Pat MacMurtry, business office manager, is in charge of this department. The five patient accounts representatives in this department are responsible for overseeing patient accounts and billing. They will have contact with laboratory technicians, programmers, and medical records employees for billing purposes. They have limited contact with MHWs except when the MHWs escort patients to the office to address a problem with the bill. The cashier is responsible for the daily deposits of cash receipts for the entire organization, as well as for the petty cash disbursements. The cashier will have contact with MHWs and ACWs when they escort patients to pick up funds. The cashier also has frequent contact with the unit clerks and the recreational specialists, who may have petty cash needs. The general ledger accountants are responsible for financial reporting, and make journal entries summarizing the financial transactions of the Employer. They have daily contact with employees in the information services department, and they may need to contact the laboratory technicians and therapists to discuss problems.⁵¹ The accounts pay-

able clerk is responsible for ensuring that all bills are proper and are paid in a timely manner. In the course of her duties, she is in contact with various employees throughout the Employer's operation to answer questions regarding services. Business office employees all work a day shift. They rarely go on patient floors.

Unit Determination: Conclusion

The Petitioner would limit the appropriate unit to technical employees employed at the Rockwell Center, excluding the Mulberry Bush Child Care Center. The Employer contends that the unit must include all nonprofessional employees of the Employer.

In *St. Francis Hospital*, 271 NLRB 948 (1984) (*St. Francis II*), the Board continued to analyze the traditional community of interests factors in determining appropriate health care units by articulating a "disparity of interest" standard for this industry. To accommodate Congress' admonition to avoid fragmentation of bargaining units in the health care field, the Board requires more in the way of differences between the employees requested and those in an overall unit than would be necessary in another industry before it will grant a separate unit. *St. Vincent Hospital*, 285 NLRB 365 (1987).⁵² Here, I find that, upon full consideration of all factors and the application of the "disparity of interests" standard, only an overall unit of all non-professional employees of the Employer is appropriate.

The interests of all nonprofessional employees of the Employer are identical in many respects. All employees share common personnel policies, benefits, and overall working conditions. The average wage rate for nontechnical, non-professional employees is 89 per cent of that for technical employees. It is true, as the Petitioner contends, that the technical employees are bunched in wage levels 6 to 10 of the Employer's pay scale. However, the technical employees share these wage levels with many nontechnical, nonprofessional classifications.

There is not so much difference between the qualifications, skills, and training of the two groups here as may be the case in other health care institutions. This is because here the majority of the technical positions require only a high school diploma, as is also the case with most of the nontechnical, nonprofessional classifications. Technical employees of the Employer are often required to attend in-service education that other employees are not required to participate in; however, some categories of service and maintenance employees, such as nurses aides, are encouraged to attend the educational programs. Although technical employees' functions involve the use of greater independent judgment than do

on-the-job training at the Employer. There is no requirement of in-service education for this classification.

Other clerical employees in the business office are required to have a high school diploma.

⁵²In *St. Vincent Hospital*, supra, the Board indicated that the *St. Francis II* analysis would continue to be applied to bargaining unit determinations in the health care industry until the Board's rule-making process has been completed.

On April 21, 1989, the Board issued its final rules regarding collective-bargaining units in the health care industry. See 29 CFR Part 103. *St. Francis II* is still applied pending implementation of the rules. I note, however, that the rules, when implemented, would not apply to "psychiatric hospitals" like the Employer.

⁴⁹ Although an associate's degree is required for this position, no speciality is required, although graphic design and computer education is preferred.

⁵⁰ At the hearing, the parties stipulated that the teachers are technical employees and that the aides are not technical employees.

⁵¹ The position of general ledger accountant, also known as staff accountant, requires a 2-year degree in accounting. Of the three employees currently in this classification, one has an associate's degree. The other two employees are high school graduates who received

service and maintenance employees, the level of education and training of technical employees is not so great as to constitute a substantial disparity. In a sense, most of the petitioned for employees, found to be technicals, just barely cross the line into the category of technical. In a case, as here, where the two groups are so close in wage rates, education, and training, to place them in separate units would render the "disparity of interest" test meaningless.

Other factors cited by the Board in the above cases also support my determination. Although there is little evidence of job sharing or temporary interchange, there is some evidence of permanent transfer between the two groups and the performance of duties in both groups by some employees. The evidence on this factor is hardly overwhelming, but, when combined with the virtual identity of wage rate, educational factors, and overall working conditions, contributes to the overall conclusion that there is little disparity of interest between the two groups.

The functional integration of the Employer, described earlier, means that technical employees have important contacts with nontechnical, nonprofessional employees, throughout the Employer's operation. Some of the contact is substantial, and much of the contact is incidental to the delivery of the Employer's services.⁵³ On balance, I find the differences between the technical and nontechnical employees are not sufficiently disparate to warrant a separate technical unit.

⁵³ In addition to the contact described above, the record contains evidence of contact between the various classifications, including classifications not described above, ranging from incidental to frequent. Some contacts, such as those between the user advocate (who assists employees in handling data processing equipment) and the MHWs, are virtually nonexistent; some contacts, such as between MHWs and housekeeping, are limited; some contacts, such as between the community relations representative (who coordinates after-care) and discharge planners, are more frequent; and some contacts, such as between MHWs and unit clerks, who perform clerical work on the patient floors and who share work and break areas with MHWs, are extensive and continuous. Even among the technical employees themselves, there are different levels of contact between the classifications; for instance, ACWs at Cedar Street have no interaction with MHWs, while MHWs and LPNs or recreational specialists have frequent contact. Skilled and unskilled maintenance employees work throughout the Employer, and may have brief contact with any classification of employee who is working in the area requiring repair; power plant employees have contact with maintenance employees, but have virtually no interaction with employees who work on patient floors. The offset printer and bindery supervisor at Wheeler Vocational Center have limited contact with technical employees, but spend a large portion of their time working directly with some of the same patient population served by MHWs and ACWs. In general, Employer witnesses testified to greater incidence and duration of contacts between the two groups than did the Petitioner's witnesses. The totality of the evidence on the incidence and duration of contacts between employees is too great to recite in its entirety in this decision. I have carefully reviewed all of the evidence on this matter, and I find that there is more than sufficient contact between the two groups to support a combined unit under *Southern Maryland Hospital*, *infra*.

In support of its position, the Petitioner cites *Southern Maryland Hospital Center*, 274 NLRB 1470 (1975). A close examination of that case, however, reveals that it is distinguishable. In *Southern Maryland Hospital*, *supra*, the difference in wage rates between the two groups was 25 to 35 percent, a "substantial disparity," compared to the 11-percent average difference here. Unlike the technical employees in *Southern Maryland Hospital*, *supra*, many of the technical employees here acquire the skills to perform their duties through on-the-job training and in-service education rather than through technical schools or college. The employer in *Southern Maryland Hospital*, *supra*, was larger than the Employer, yet had fewer instances of transfer and nothing analogous to the per diem employees that perform jobs in the other group. Considering all factors, I do not find that *Southern Maryland Hospital*, *supra*, requires a different result.

I find no basis in the record to exclude from a unit of nonprofessional employees those employees of the Employer employed at the Meadows School, Mulberry Bush Child Care Center, or the quality control department. These employees are governed by the same labor relations policies, and work under the same conditions as other employees of the Employer. They have regular contact with other unit employees, and I will include them in the unit.

The Petitioner would also exclude business office employees from the unit. I find that there is an insufficient disparity of interests between the business office clericals and other nonprofessional employees such as to exclude them from the unit. These employees work under the same labor relations policies and working conditions as do all other employees. They have work related contact with various unit employees to discuss billing matters, advise of admissions, relay telephone calls, distribute petty cash, and so on. Business office clericals may bid on any job vacancy at the Employer, and they share common facilities with other employees. There is virtually no difference between the business office clericals here and those in *Baker Hospital*, 279 NLRB 308 (1986). As in *Baker Hospital*, there are no sharper than usual differences here that warrant the exclusion of the business office clericals from the non-professional unit. Although most clericals here do not go on patient floors or become directly involved in patient care, that is the usual case among business office clericals and it therefore is not a "sharper than usual" difference such as to justify their exclusion from the unit.

J. Supervisory Issue

The Petitioner would include ACW III Brenda Gilfallan in the unit. The Employer did not agree that Gilfallan is a non-supervisory employee of the Employer.

Gilfallan spends most of her time performing duties similar to the ACW II classification that is included in the unit. She also has a charge position for the evening hours, when Ray Kellet, clinical director of the Cedar Street program, is not scheduled to work.

Gilfallan has no power to hire, discharge, or discipline employees. Gilfallan may sit in on interviews of applicants for ACW positions with Kellet. Gilfallan can make a recommendation to Kellet, and Kellet takes it seriously; however, in all cases Kellet makes the final decision on hiring for the department. When Kellet fills out employees' annual evaluations, he may ask Gilfallan for her input regarding employees' performance and Gilfallan will give Kellet an oral response or will circle responses on a printed evaluation form. A favorable evaluation cannot result in a wage increase for employees, and unfavorable evaluations will result in the employee receiving a greater degree of supervision. Kellet may also ask Gilfallan her opinion of a probationary employee.

Gilfallan may assign tasks to employees on the evening shift. She attempts to evenly distribute any difficult tasks among employees on any given shift. She also has a role in scheduling ACWs. Although the rotation of employees is generally on a set schedule, Gilfallan arranges for vacation coverage by asking employees to come in or by calling per diems. She cannot compel employees to work additional hours and she cannot deny vacation time to an employee if coverage cannot be arranged. She has a role in filling out employee time cards, although it is unclear from the record exactly what that role is.

To qualify as a supervisor, an individual must possess one of the powers specified in Section 2(11) of the Act. *Chicago Metallic Corp.*, 273 NLRB 1677, 1689 (1985). The exercise of supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner will not elevate an employee into the supervisory ranks. *Opelika Foundry*, 281 NLRB 897, 899 (1986). In addition, the existence of independent judgment alone will not suffice, especially in a technical or professional classification; rather, independent judgment must be exercised with respect to one of the specific authorities enumerated in the Act. *Advanced Mining Group*, 260 NLRB 486, 506–507 (1982). Whenever evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *Phelps Community Medical Center*, 295 NLRB 486 (1989).

I find that there is insufficient evidence upon which to conclude that Gilfallan is a statutory supervisor. She cannot hire, discharge, or discipline employees. Her role in evaluations constitutes a reportorial function, at best, *Passavant Health Center*, 284 NLRB 887, 891 (1987), and, in any case, is not indicative of supervisory status since the evaluations do not effectively recommend personnel actions. *Sutter Community Hospitals*, 227 NLRB 181, 191–192 (1976); *Eventide South*, 239 NLRB 287, 288 (1978). There is no evidence of the use of independent judgment by Gilfallan in the assignment of tasks to employees on the evening shift; indeed, it appears likely that the assignments are routine directions to employees who know their tasks. The fact that difficult tasks are assigned to employees on a rotating basis is indicative of the lack of independent judgment used in this regard. Similarly, Gilfallan's role in scheduling vacations and calling in employees to provide coverage for vacation periods, without

more, is merely evidence of a ministerial function. Accordingly, I find that there is insufficient evidence to affirmatively establish that Gilfallan is a supervisor within the meaning of the Act, and I will include her in the unit.

K. *Per Diem Employees*

The Petitioner would include in the unit per diem employees who regularly average 4 hours or more of work per week during the quarter prior to the election eligibility date. The Employer would either exclude per diem employees from the unit entirely, or include them subject to a formula. The Employer did not suggest an alternate formula, however.

In the prior, recent Decision and Direction of Election in this matter, per diem employees otherwise in the unit description were included in the unit according to the formula requested here by the Petitioner. The entire record demonstrates that per diem employees in all job categories are hired in the same manner as regular employees of the Employer, through the Employer's human resource department. To be hired, they must meet the qualifications of regular employees. After hire, they perform the same duties under the same supervision as other employees within the classification. Although per diem employees do not receive the same benefits as other employees, they are paid at comparable rates and are subject to the same personnel policies and procedures.⁵⁴

Per diem employees or on-call employees are eligible to vote in Board elections if they are regularly employed by the Employer and share a community of interest with other unit employees despite their per diem status. *Sisters of Mercy Health Corp.*, 298 NLRB 483 (1990), and cases cited therein. Here, in view of their common wages, working conditions, and supervision, I find that per diem employees who are regularly employed by the Employer share a community of interest with unit employees and should be included in the bargaining unit. I will include per diem employees in the unit if they regularly average 4 hours or more of work per week during the quarter prior to the election eligibility date.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time non-professional employees employed by the Employer at its Brattleboro Vermont location, including Linden Lodge employees, Meadows School employees, Mulberry Bush Child Care Center employees, technical employees, and business office clerical employees, but excluding professional employees, Connecticut North employees, Starting Now

⁵⁴ Much of the evidence regarding the community of interest between per diem employees and other employees is from the record in Case 1-RC-19451.

employees, farm employees, confidential employees⁵⁵ guards, and supervisors⁵⁶ as defined in the Act.

⁵⁵ The parties stipulated that the following employees are to be excluded from any bargaining unit as confidential employees: Susan Winter, secretary to administrator; Minnie Wheeler, executive secretary to CEO; Veronica Gogel, executive secretary to vice president, finance; Polly McAllister, executive secretary to vice president, human resources; Jean Johnson, executive secretary to medical director; Phyllis Padham, executive secretary to medical staff; Jeanne Mulhall, executive secretary to director of nursing; Marge Romaine, payroll clerk; Nancy Brooks, payroll clerk; Evelyn McLean, benefits/compensation specialist; Louise Ewing, employment specialist; Gloria Pinkerton, benefits/employment assistant; Beatrice Garland, personnel clerk/receptionist; and Linda Holden, administrative assistant.

⁵⁶ In accordance with the stipulations of the parties and the record as a whole, the following individuals are found to be supervisors within the meaning of the Act and are excluded from the unit: Roberta Bremmer, administrator; Betty McCormick, director of nursing; Sandra Ware, activities director; Phyllis Rogers, assistant director of nursing; Sherry Moran, RN supervisor; Mona Young, RN supervisor; Liz Kelley, RN supervisor; Leta Abbott, RN supervisor; Sally Southworth, RN supervisor; Maureen Santamaria, RN supervisor; Lynn Irwin, educational coordinator; Percy Roy West, food production manager; Elaine Stiles, tray line supervisor; Deborah Decoteau, tray line supervisor; Eve McCullen, tray line supervisor; Dorothy Day, tray line supervisor; Roger Doiron, manager (ARA); Janis Wall, dietitian (ARA); Dennis Sicotte, first cook; Mary Fischer, assistant director, housekeeping; Mitchell Thomas, supervisor, housekeeping;

[Direction of Election omitted from publication.]

David Marquis, director, housekeeping; Jacqueline Drapeau, chief, social work; Nursing Managers Jill Gentilin, Verne Moberly, Layne Herschel, Debra Lackey, and Audrey Renaud; Judith Sanders, director of nursing; John Hughes, house charge; John Aufmuth, assistant house charge; Karen Schady, nursing QA coordinator; L. John Isselhardt, director of addictive services; John Moran, CDC II; William Stearns, vice president of human resources; Judith Hopkins, director of human resources; Gail Lilly, director of education; Brian Frost, director of Wheeler Vocational Center; Raymond Weeks, plant manager of Wheeler Vocational Center; Leigh Yardley, director, Military us Child Care Center; Ralph Pecorelli, facilities director; Mike Lavender, director of engineering; Kevin Duby, energy systems manager; Patrick Mulhall, power room supervisor; Chuck Mitchell, plant operations supervisor; Chris McGowan, vice president of finance; Patricia MacMurtry, business office manager; Nancy Keith, patient accounts manager; Georgia-Lee Agallianos, director of information services; Sallie May, manager of word processing; Patrick Lapan, manager of materials management; Robert Mansfield, division administrator; Andrea Livermore, division administrator; Andrew McFarland, director of program development; Gary Keiser, division administrator; Sen Pen Pu, director of pharmacy; Charles McLoughlin, director of marketing; Kurt Isaacson, planning director; Jane Rand, director of library services; Mary Mobley, director of admissions; Carol Albright, RN manager; Ray Kellet, clinical director of residential program; Douglas Miller, acting director of therapeutic activities service; Dora Sprague, executive assistant to CEO; Ruth MacDonald, director of Meadows School; and Judy Hawkins, director of medical records.